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Attorneys for the United States.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

GAIL P. HORSLEY,	)	
Plaintiff,	)	Case No.: 2:12-cv-2185-JCM-PAL
	)	
v.	)	
	)	
UNITED STATES OF AMERICA, a	)	
federal republic,	)	
	)	
Defendant.	)	

**DEFENDANT'S APPLICATION FOR STAY DURING LAPSE IN**  
**APPROPRIATIONS**

Defendant United States of America requests the Court to stay proceedings in this matter during the period of lapse in appropriations for the United States Department of Justice.

At midnight on September 30, 2013, the continuing resolution that was funding the Department of Justice and appropriations to the Department lapsed. The same is true for most Executive Branch agencies, including the Department of Interior (agency counsel in this case). The date when funding will be restored by Congress has not been established. The Anti-deficiency Act, 31 U.S.C. §1341, as construed by the Attorney General, provides that in the absence of appropriated funds no obligation can

1 be incurred except for the protection of life and property, the orderly suspension of  
 2 operations, or as otherwise authorized by law. This means that absent an  
 3 appropriation, Department of Justice attorneys, as well as agency counsel, are  
 4 prohibited from working, even on a volunteer basis, “except for emergencies  
 5 involving the safety of human life or the protection of property.” 31 U.S.C. §1342.  
 6 Accordingly, each U.S. Attorney has been instructed to designate those attorneys and  
 7 support staff whose work is necessary to sustain legal operations essential to the safety  
 8 of human life and the protection of property. The Department of Justice has issued  
 9 guidance which gives priority to continuing work on criminal cases. Consequently,  
 10 only a very few employees in the Civil Division of the United States Attorney’s  
 11 Office for the District of Nevada will be authorized to work during a lapse in  
 12 appropriations – the rest will be furloughed.

13 The agency attorneys assigned to handle Federal Tort Claims Act (FTCA) cases  
 14 arising on Lake Mead National Recreation Area (the area at issue in this lawsuit), who  
 15 participate in all aspects of the preparation and filing of pleadings in FTCA cases,  
 16 have also been furloughed for the duration of the lapse in appropriations. The need for  
 17 the relief of a stay is urgent because of the following impending deadline(s):

<u>Item</u>	<u>Due Date</u>
Government’s Written Discovery Responses	October 11, 2013
Discovery Cut-Off	December 2, 2013

21 Therefore, the undersigned counsel requests a stay of this matter until Congress  
 22 has restored appropriations and the assigned attorneys are permitted to resume work  
 23 on this case.

24 Denial of a stay in this matter would be prejudicial to the interests of the United  
 25 States. The Government does not have civil attorneys available to become conversant  
 26 with this entire case in the short time available to complete the discovery responses  
 27 due this week, nor could an attorney adequately engage in discovery necessary to  
 28 prepare the Government’s defense due to the lack of familiarity with the case and its

1 issues. Plaintiff will not be prejudiced by the proposed delay because the delay is not  
2 anticipated to significantly alter the course of resolution of this matter.

3 If this motion for a stay is granted, undersigned counsel will notify the Court as  
4 soon as Congress has appropriated funds. It is requested that, at that time, all current  
5 deadlines for the parties be extended commensurate with the duration of the lapse in  
6 appropriations. A form of order is attached.

7 Dated this 9th day of October, 2013.

8 DANIEL G. BOGDEN  
9 United States Attorney

10 /s/ Nadia J. Ahmed  
11 NADIA J. AHMED  
12 Special Assistant United States  
13 Attorney  
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**PROOF OF SERVICE**

I, Nadia J. Ahmed, certify that Plaintiff's attorney of record, Joseph Benson, was served with a copy of the foregoing document, on the date shown, by means of electronic filing.

Dated: October 9, 2013

/s/ Nadia J. Ahmed  
NADIA J. AHMED  
Special Assistant United States  
Attorney

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

GAIL P. HORSLEY,

Plaintiff,

v.

UNITED STATES OF AMERICA, a  
federal republic,

Defendant.

Case No.: 2:12-cv-2185-JCM-PAL

**ORDER FOR STAY OF PROCEEDINGS DURING LAPSE IN  
APPROPRIATIONS**

1. The Court has been advised that at midnight on September 30, 2013, the continuing resolution that was funding the Department of Justice expired and the appropriation of funds to the Department lapsed. The same is true for most Executive Branch agencies, including agency counsel involved in litigation in this District.

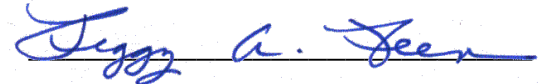
2. Absent an appropriation, Department of Justice attorneys and employees of the federal agencies are prohibited from working, even on a volunteer basis, “except for emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342. Civil cases are not deemed to be within this exemption.

3. The Court has been informed that the lapse in appropriations therefore prevents Department of Justice attorneys and their federal agency counterparts from appearing at hearings and depositions and performing work necessary to meet case deadlines, including those imposed by statute, the Federal Rules of Civil Procedure, the Civil Local Rules of this District, and by case management orders issued in individual cases. This situation will cause prejudice to the interests of the United States and the federal agencies, officers, and employees involved in civil litigation in this District.

1 IT IS THEREFORE ORDERED that all time limits and deadlines in this case  
2 are extended for a period of time equal to the duration of the lapse in appropriations to  
3 the Department of Justice and the Federal Defendant and depositions and court  
4 hearings are vacated. Further, this stay does not apply to applications for emergency  
5 relief.

6 This Order shall apply nunc pro tunc to October 1, 2013.

7 DATED: October 39, 2013



8 United States District Judge  
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